IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

WP(C).No. 34706 of 2003(F)

PETITIONERS:

1. **MRS. JANAKI GOPALAKRISHNAN, W/O. C.A.GOPALKRISHNAN, AGED 48 YEARS, RESIDING AT "MANGALA VILAS", KASABA AMSOM DESOM, KOZHIKODE TALUK.**

2. **C.A.SUBRAMANIAN, S/O. LATE C.R.ANANTHANARATYANA IYER, AGED 50 YEARS, RESIDING AT "MANGALA VILAS", KASABA AMSOM DESOM, KOZHIKODE TALUK**

BY ADV. SRI.AVM.SALAHUDIN
SRI.M.K.SREEGESH

RESPONDENTS:

1. **M/S. C.V.R.PAPER INDUSTRIES HAVING ITS REGISTERED OFFICE AT RAMA MENON ROAD, KASABA AMSOM DESOM, KOZHIKODE TALUK, (REPRESENTED BY ITS MANAGING PARTNER MRS.PUSHPA RAMAKRISHNAN)**

2. **M/S.C.V.RAMAKRISHNA IYER AND SONS PVT. LTD., HAVING ITS REGISTERED OFFICE AT RAMAN MENON ROAD, KASABA AMSOM DESOM, KOZHIKODE TALUK, REP. BY ITS MANAGING DIRECTOR C.G.RAMAKRISHNAN, RESIDING AT "BRINDAVAN" SAMOOHAM ROAD, KASABA AMSOM DESOM, KOZHIKODE TALUK.**

3. **MRS.PUSHPA RAMAKRISHNAN, W/O. C.G.RAMAKRISHBNAN, AGED 45 YEARS, RESIDING AT "BRINDAVAN", SAMOOHAM ROAD, KASABA AMSOM DESOM, KOZHIKODE TALUK.**

4. **MRS. LALITHA GOPALAKRIASHNAN, W/O. C.R.GOPALAKRISHNA IYER, AGED 77 YEARS, RESIDING AT "BRINDAVAN" SAMOOHAM ROAD, KASABA AMSOM DESOM, KOZHIKODE TALUK.**

BY ADV. SRI.JACOB ABRAHAM
SRI.C.P.MOHAMMED NIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.34706/2003

APPENDIX

PETITIONERS EXHIBITS

EXT.P1:- COPY OF THE RECONSTITUTED DEED DT. 15.5.91 OF IST RESPONDENT PARTNERSHIP FIRM.

EXT.P2:- COPY OF THE PLAINT DT. 30.9.2000 IN OS. NO.313/2000.

EXT.P3:- COPY OF THE AFFIDAVIT FILED BY THE RESPONDENTS 3 AND 4 IN SUPPORT OF IA.1250/01 IN OS. NO.313/2000 FILED BEFORE THE SUB COURT III (A), KOZHIKODE.

EXT.P4:- COPY OF THE COUNTER IN IA. NO.1250/01 IN OS. 313/2000 FILED BY THE PETITIONER.

EXT.P5:- COPY OF THE ORDER DT. 7.8.01 IN IA. NO.1250/01 IN OS.N O.313/2000 SUB COURT III (A), KOZHIKODE.

EXT.P6:- COPY OF THE JUDGMENT DT. 7.8.01 IN OS. NO./313/2000 SUB COURT III (A), KOZHIKODE.

/TRUE COPY/

P.S. TO JUDGE

ss

PIUS C. KURIAKOSE, J.

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W.P.(C)No.34706 OF 2003

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DATED THIS THE 7TH AUGUST, 2007

J U D G M E N T

The case of the petitioners is that they are retired partners of a partnership firm. Respondents 3 and 4 are existing partners who are managing the properties of the firm. M/s.C.V.Ramakrishna Iyer & Sons (P) Ltd. is not a partnership firm, but it is a company registered under the Companies Act. The husband of the third respondent is the Managing Director of that Company. On retirement the partners demanded their share in the partnership firm from respondents 2 and 3. Repeated requests were made to them by the petitioners. Petitioners tried their best for conciliation and settlement of the matter, but the respondents did not turn up. Petitioners filed O.S. 313/2000 before the III Additional Sub Court, Kozhikode for realizing Rs.11,39,544/- being the value of the share of the petitioners in the partnership firm. Respondents who are the defendants in the suit filed written statement raising several contentions. Along with the written statement respondents 3 and 4 filed application Ext. P3 under section 8 of the Arbitration and Conciliation Act, 1996 to refer the parties to arbitration. To Ext.P3 application petitioners filed counter Ext.P4

opposing the same. It was contended that Ext.P3 has been filed without bona fides. Under Ext.P5 the learned Sub Judge allowed the application Ext.P3 and referred the parties to arbitration. Consequently, Ext.P6 judgment was passed and the suit itself was disposed of. It is impugning Exts.P5 and P6 on various grounds that this writ petition under Article 227 has been filed.

2. I have heard the submissions of Advocate Sri.A.V.M.Salahuddeen, counsel for the petitioner and Sri. C.P.Mohammed Nias for the contesting respondents. Sri.Salahuddeen would place strong reliance on the judgment of the Supreme Court in Sukanya Holdings (P) Ltd. v. Jayesh H.Pandya, (2003) 5 SCC 531 and also another judgment of the Supreme Court in Hindustan Petroleum Corpn Ltd. v. Pinkcity Midway Petroleums, (2003) 6 SCC 503 in support of his submissions. Sri.Mohammed Nias per contra would refer to the judgment of this Court in Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co., 1007(1) KLT 196.

3. According to me, the judgment of the Supreme Court in Sukanya Holdings case is apposite to the facts obtained in this case. As rightly noticed by the learned Sub Judge on the averments in the plaint itself no cause of action has been put against 4th respondent.

On a careful scrutiny it would be seen that actually relief is sought for against the other defendants and the 4th defendant. In that view of the matter the impugned order is sustainable.

4. There is another reason as to why I am not inclined to invoke the constitutional jurisdiction of this court in favour of the petitioner. Impugned order was passed as early as on 7-8-2001 and there has been considerable delay in the matter of petitioners approaching this court. The delay has not been explained at all.

5. At the same time I feel that the court below could have ordered refund of full court fee paid on the plaint by the plaintiffs. Therefore even as I confirm Exts. P5 and P6, I order refund of the full court fee paid on the plaint to the petitioners through their counsel in the court below. It is clarified that applying the principles laid down by the Supreme Court that the arbitrator will be free to decide even the question of arbitrability of the referred issues. Writ petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

ksv/16208.